

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BEE CREEK PHOTOGRAPHY,

Plaintiff,

- against -

ADVANTAGE TESTING, INC.

Defendant.

Docket No. 1:18-cv-7364

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Bee Creek Photography (“Bee Creek” or “Plaintiff”) by and through its undersigned counsel, as and for its Complaint against Defendant Advantage Testing, Inc., (“Advantage” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of the Houston Texas skyline, owned and registered by Bee Creek, a commercial photography studio. Accordingly, Bee Creek seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Bee Creek is a commercial photography studio specializing in high quality image and prints for editorial, hospitality, architectural and commercial uses having a usual place of business at 21003 West Lakeshore Drive, Spicewood, TX 78669.

6. Upon information and belief, Advantage is a foreign business corporation duly organized and existing under the laws of the State of New York, with a place of business at 210 East 86th Street Ste 601, New York, New York 10028. Upon information and belief Advantage is registered with the New York Department of State Division of Corporations to do business in the State of New York. At all times material, hereto, Advantage has operated a Facebook Page at the URL: https://www.facebook.com/pg/AdvantageTestingHouston/about/?ref=page_internal (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Bee Creek photographed the Houston Texas skyline (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Bee Creek is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with the United States Copyright Office and was given registration number VAu001259726 and titled “Bee Creek_Todd_Houston Skyline Panorama.” See Exhibit B.

B. Defendant’s Infringing Activities

10. On or about December 29, 2017, copied the Photograph and used the Photograph as the main banner for the Website. See URL

https://www.facebook.com/pg/AdvantageTestingHouston/about/?ref=page_internal. A true and correct copy of the Website is attached hereto as Exhibit C.

11. Advantage did not license the Photograph from Plaintiff for its article, nor did Advantage have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST ADVANTAGE)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Advantage infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Advantage is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to its attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Advantage be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded its costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
August 15, 2018

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz
Richard P. Liebowitz
11 Sunrise Plaza, Suite 305
Valley Stream, New York 11580

Tel: (516) 233-1660
RL@LiebowitzLawFirm.com

Attorneys for Plaintiff Bee Creek Photography